

TOWN OF ARLINGTON

Zoning Board of Appeals

730 Massachusetts Avenue

Arlington, MA 02476

DECISION ON APPLICATION FOR COMPREHENSIVE PERMIT

G.L. c. 40B, §§ 20-23

APPLICANT: 1025 Mass Ave, LLC (“Applicant”)

PROPERTY: 1021 and 1025 Massachusetts Avenue, Arlington, MA (the “Property”)

ASSESSORS’ MAP: Assessors Parcels 055.0-0002-0019.0 and 055.0-0002-0020.0

DEVELOPMENT NAME: The Residences at Mill Brook

DATE: May 30, 2023

I. PROCEDURAL HISTORY

1. An application for a Comprehensive Permit was received by the Town of Arlington Zoning Board of Appeals (the “Board”) on or about September 20, 2022 (“Application”). The Application proposes the development of fifty (50) units of home ownership housing with associated parking in a single structure located at the Property (the “Project”).
2. The Board’s public hearing on the Application was duly opened on October 18, 2022.
3. The Project is located on the Property, which is located at 1021-1027 Massachusetts Avenue, Arlington, Massachusetts. The Property is located on approximately 1.08 acres of land.
4. The Property is located in the Neighborhood Office (B1) Zoning District and is adjacent to the Residence 6 (R6) Zoning District. Nearby uses consist of commercial, office, and residential uses including an apartment building, a two-family home and a condominium development known as Millbrook Condominiums.

APPROVED FINAL DRAFT

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5. The Property consists of approximately 1.08 +/- acres. The Property currently contains two (2) existing structures on footprints comprising 11% lot coverage of the Property. Additionally, the Property contains significant pavement, covering approximately twenty-five percent (25%) of the Property, for a current total impervious area of thirty-six percent (36%). No stormwater management structures are present on the Property to attenuate runoff from the existing impervious area.
6. The Applicant provided various materials, reports, studies, and revised plans throughout the course of the public hearing on the Application.
7. The Applicant proposes the fifty (50) home ownership condominium units in a single structure, of which a minimum of twenty-five percent (25%) will be restricted as affordable units as determined by the Subsidizing Agency (MassHousing or Other Subsidizing Agency). The Applicant also proposes approximately 1,700 square feet of ground-level commercial space.
8. During the public hearing, the Applicant was assisted primarily by its principals Matthew Maggiore, Jacquelyn Maggiore and Paul Maggiore, of Maggiore Construction, its counsel Paul Feldman, Esq., of Davis Malm, its civil engineer Michael J. Novak, P.E., of Patriot Engineering, LLC, its architect Chris Mulhern, AIA, of Harrison Mulhern Architects, its environmental consultant Richard A. Kirby, of LEC Environmental Consultants, Inc., and its traffic engineer Shaun P. Kelly, of Vanasse & Associates, Inc.
9. The Board utilized the services of Sean Reardon, P.E., of Tetra Tech, Inc., and Cliff Boehmer, AIA, of Davis Square Architects for design review. The Board also utilized the services of Town Counsel Douglas Heim, Esq., Planning Director Claire Ricker, Town Engineer Wayne Chouinard, and other town staff. The Board was also represented during the course of the hearing by Paul Haverty, Esq., of Blatman, Bobrowski, Haverty & Silverstein, LLC as its Chapter 40B technical consultant through a grant from the Massachusetts Housing Partnership.
10. During the public hearing, there was significant public input. The Board heard input from abutters and other interested persons throughout the hearing process. The Board also heard significant input from town departments, including the Conservation Commission, the Department of Planning and Community Development, the Engineering Division, the Transportation Advisory Committee, the Arlington Affordable Housing Trust, the Clean Energy Future Committee, the Arlington Fire Department, the Inspectional Services Department, the Arlington Historic Commission, and the Arlington Tree Committee

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II. JURISDICTIONAL FINDINGS

11. The Applicant has demonstrated its eligibility to submit an application for a Comprehensive Permit to the Board, and the development fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:
 - a. The Applicant is a limited liability company, and has indicated in its application that it will conform to the limited dividend requirements of G. L. 40B, §§ 20-23, thus establishing it is a limited dividend entity. The Applicant has a principal address of 13 Wheeling Avenue, Woburn, MA 01801.
 - b. The Applicant has received a written determination of Project Eligibility from MassHousing dated August 19, 2022 under the New England Fund Program, a copy of which was provided to the Board with the original application.
 - c. The Applicant provided a copy of Purchase and Sale Agreement between 1021 Massachusetts Avenue, LLC and MAJ Investment, LLC (that has been assigned to the Applicant) and a copy of a Purchase and Sale Agreement between Jonathan Nyberg and Sara Q. Dolan and MAJ Investment that has been assigned to the Applicant). The Subsidizing Agency determined that the Applicant has site control to pursue a comprehensive permit a part of its Project Eligibility Letter. Pursuant to 760 CMR 56.04(6), this determination is conclusive as to the issue of site control.
 - d. The Applicant has agreed to execute a Regulatory Agreement that limits its return to not more than twenty percent (20%) of total development costs in accordance with G. L. c. 40B and the regulations (760 CMR 56.00 et seq.) and guidelines adopted thereunder by DHCD.
12. The Town of Arlington (the “Town”) did not meet the statutory minima set forth in G. L. c. 40B, § 20 or 760 CMR 56.03(3) to 56.03(7) at the time the original application was filed.
 - a. At the time of the filing of the Application, the number of low- or moderate-income housing units in the Town constituted 6.54% of the total year-round housing units in the Town, based on the most recent publicly available copy of the DHCD Subsidized Housing Inventory, dated April 27, 2022. Thus, the Town does not meet the ten percent (10%) statutory minimum.

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- b. In another pending comprehensive permit application, the Board has asserted a claim that there are existing affordable housing units that are on sites that comprise more than one- and one-half percent (1.5%) of the total land area of the Town that is zoned for residential, commercial or industrial use (excluding land owned by the United States, the Commonwealth of Massachusetts, or any political subdivision thereof). The Board timely asserted this claim pursuant to 760 CMR 56.03(8). The Applicant appealed this claim to the Department of Housing and Community Development, which issued a decision dated November 17, 2016, reversing the Board's Safe Harbor determination. The Board appealed this decision to the Housing Appeals Committee. On October 15, 2019, the Housing Appeals Committee upheld the decision of the Department of Housing and Community Development. The Board ultimately issued a decision approving a comprehensive permit for this development, which is currently under appeal. Without waiving its rights on the other pending application, the Board did not provide the Applicant with written notice of this safe harbor pursuant to 760 CMR 56.03(8) on this application.
- c. The granting of this Comprehensive Permit will not result in the commencement of construction of low- or moderate-income housing units on a site comprising more than three tenths of one percent of land area in the Town or ten acres, whichever is larger, zoned for residential, commercial or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) in any one calendar year.
- d. The Town has an approved Housing Production Plan pursuant to 760 CMR 56.03(4), but is not currently within (or eligible for) certification.
- e. The Town has not achieved recent progress toward its housing unit minimum pursuant to 760 CMR 56.03(5).
- f. The Project as originally submitted does not constitute a Large Project pursuant to 760 CMR 56.03(6).
- g. The Applicant's Comprehensive Permit Application does not constitute a Related Application pursuant to 760 CMR 56.03(7).

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III. FACTUAL FINDINGS

Location of Project

13. The Project is located on a previously developed 1.08 acre parcel of land located at 1021-1027 Massachusetts Avenue. A portion of the Property is located within the 200-foot riverfront area for Mill Brook. The Property is located within the Neighborhood Office (B1) Zoning District.
14. In addition to being located next to various commercial uses, the Project also abuts a 12-unit apartment building located at 1033 Massachusetts Avenue, a two-family dwelling located at 1017-1019 Massachusetts Avenue, and a 99-unit condominium development located at 993-995 Massachusetts Avenue (Millbrook Condominiums). The Project is also less than 100 feet from the historic Highland Fire Station at 1007 Massachusetts Avenue.
15. The existing sidewalk along Massachusetts Avenue adjacent to the Project is in fair condition, but generally not in compliance with state and federal accessibility guidelines.
16. The traffic study indicated sight lines for traffic exiting the parking area would be diminished by parked vehicles along Massachusetts Avenue to the south of the proposed drive way. It was recommended that parking restrictions be pursued with the Town for the area immediately south of the driveway. The study also identified that an existing bus stop is located immediately north of the driveway.
17. The existing mid-block crosswalk on Massachusetts Avenue located approximately 425 feet south of the site is faded, and the existing curb cuts do not meet accessibility standards. This crosswalk would be utilized by tenants of the proposed development to access recreational and educational resources on the opposite side of the street.

Wetlands

18. The Applicant proposes work within the 200-foot riverfront area associated with Mill Brook. The riverfront area already consists of a degraded area containing approximately 2,517 square feet that is an existing paved parking area belonging to the Millbrook Condominiums. The proposed work includes approximately 4,619 square feet of disturbance to the riverfront area including construction of portions of the proposed structure resulting in additional degraded riverfront area of approximately 2,102 square feet. The installation of a subsurface stormwater management infiltration system is also proposed within the riverfront area. Two areas of on-site mitigation are proposed to address the new disturbance to the

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- riverfront area: (1) creation of a restored woodland area of approximately 7,362 square feet; and (2) creation of a meadow area of approximately 4,119 square feet. The work will also include the removal of trees, the installation of erosion controls, grading, and installation of a retaining wall, paths, signage, benches and fencing.
19. The Project also proposes off-site work within the inner 100- foot buffer zone to Mill Brook, consisting of the removal of invasive plants and installation of new native plantings. This work will be conducted by the Applicant on the abutting Millbrook Condominiums property.
 20. The Project is required to obtain an Order of Conditions from the Arlington Conservation Commission pursuant to the Wetlands Protection Act. Those conditions are included in the Conditions Section J: *Order of Conditions under the Wetlands Protection Act*.
 21. The project includes a small amount of impact in the outermost portion of the Adjacent Upland Resource Area (AURA), which is defined in the Arlington Wetland Regulations. This impact is mitigated by the significant improvements being made to the restored woodland area, which is partially within the AURA and wholly in the riverfront area.
 22. The Project is in compliance with Section 25D of the Arlington Regulations for Wetlands Protection, because the proposed work consists entirely of woodland restoration, grading, and the replacement of an existing fence. The woodland restoration is considered an enhancement of the resource area.
 23. The Applicant submitted an Impact Analysis on the Natural and Built Environment prepared by LEC Environmental Consultants, Inc.
 24. The project meets the Arlington Wetland Regulations climate change standards through consideration of climate change resilient native plantings, invasive plant control, and a stormwater management system to collect and infiltrate stormwater run-off from the proposed structure, sized for the 100-year design storm calculated using NOAA 14++ rainfall data, which captures future expected increases due to climate change.

The Transportation Network

25. All access to the Project will be from Massachusetts Avenue.
26. The Project will provide fifty-one (51) parking spaces for the residential units and commercial space.

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27. The Project will provide seventy-five (75) long-term bicycle parking spaces and eight (8) short-term bicycle parking spaces. Access to the Minuteman Commuter Bikeway is available off Brattle Street to the north of the Project.
28. The Project is adjacent to the *Massachusetts Avenue at Brattle Street* MBTA bus stop, and across the street from the *Massachusetts Avenue at Menotomy Road* MBTA bus stop. Both stops are served by bus route 77.

Civil Engineering, Site Design, and Stormwater Impact

29. The Board engaged in review of potential civil engineering, site design, traffic, and stormwater impacts of the Project.
30. The Project will connect to the Arlington municipal water and sewer systems.
31. Approximately thirty-six percent (36%) of the site is currently covered by impervious surface. The Project will increase the amount of the site covered by impervious surface to 37.8% of the Property. The Applicant proposes to mitigate the increased impervious area through the installation of a full stormwater management system in compliance with the Department of Environmental Protection's Stormwater Management Policy and based upon stormwater calculations using NOAA Atlas 14 + precipitation data. This system adequately and appropriately addresses the increase in impervious surface on the Property.
32. Stormwater management has been designed to be in compliance with the Mass Stormwater management standards in accordance with 310 CMR 10.05(6)(k) through (q) and defined in detail in the MassDEP Stormwater Management Handbook. The system incorporates best management practices (BMP's) to facilitate total suspended solids (TSS) removal, infiltration, and detention of stormwater flows.
33. The Project will require the clear-cutting of trees from the site, including a healthy, significant London Plane tree. As noted in the comments provided by the Tree Committee, replacing the lost canopy of this individual 4-foot diameter, 70-foot tall tree "would take over thirty years." The loss of the existing canopy will for a substantial period of time exacerbate heat island effects in the vicinity of the site. These effects are of special concern in this area because of the paucity of street trees along Massachusetts Avenue. Among those most affected would be the residents of the proposed building. The mitigation fees for tree removal were established to protect the Town's existing tree canopy.

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Affordability and Local Concerns

34. The Project, as conditioned herein, will address the lack of affordable home ownership units in the Town. As Karen Kelleher, Chair of the Town's Affordable Housing Trust, told the Board: "[This] Development presents an opportunity to substantially increase the number of permanently affordable homeownership units in Arlington, without subsidy from the Town. This is a critical opportunity without recent precedent..."
35. The Board finds that the conditions imposed in Section IV of this Decision are necessary in order to address Local Concerns. The Board finds that such conditions will not render the project uneconomic. To the extent that such conditions may render the project uneconomic (as defined in 760 CMR 56.02), the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.
36. The Board finds that granting certain waivers from local by-laws and regulations is acceptable even though granting waivers may have an adverse impact on Local Concerns.
37. The existing building at 1021-1023 Massachusetts Avenue is on the Arlington Historic Structures Inventory (ARL.612), requiring a determination from the Arlington Historical Commission ("AHC") whether the structure is preferably retained under the demolition delay bylaw. A formal hearing was on the AHC's agenda for Sept. 7, 2021, but it was postponed to their October 5, 2021 hearing. The formal hearing never took place. Under M.G.L., Chapter 40C, if a decision is not rendered within 60 days, a Certificate of Hardship is considered to have been constructively issued. However, if the AHC had issued a one-year demolition delay at that hearing, it would have run out before the Comprehensive Permit application was filed. The AHC held a hearing to discuss the property on April 4, 2023. The official record of the hearing was not released in time to be included in the Board's record.
38. The Board acknowledges concerns raised by abutters and other interested parties about the Project's scale and elimination of the existing tree canopy, which could lead to an increase in heat island effects in the area. The Board has addressed these concerns by the imposition of appropriate conditions. The Board further finds that conditions detailed below appropriately address these matters of Local Concern in a manner that outweighs the regional need for affordable housing. The Board finds that the conditions imposed below address local and regional housing needs while properly protecting valid issues of Local Concern.
39. The Board finds that the construction of the Project, as conditioned, will be

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consistent with Local Needs.

IV. CONDITIONS

A. **General**

- A.1 The holder of this Comprehensive Permit is 1025 Mass Ave, LLC. The Property is defined as the property located at 1021-1023 and 1025-1027 Massachusetts Avenue, Arlington, Massachusetts, shown on a plan entitled “1021 and 1025 Massachusetts Avenue, Comprehensive Permit Plan Set, Located in Arlington, MA” dated September 19, 2022, with revisions through February 22, 2023, prepared by Patriot Engineering. The Project is defined as all features shown on the plans listed below in Condition A.2 or as otherwise required by this Comprehensive Permit. The Project is intended to be a condominium development. The use of the term Applicant shall also include the successor Condominium Association once the Project is constructed and the condominium created.
- A.2 Except as may be provided for in the following Conditions or in the Final Plans referenced below, the Project shall be constructed substantially in conformance with the plans and drawings listed below in this Condition A.2, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project (“Approved Plans”). Minor changes to the Approved Plans (e.g., changes that do not materially affect the location of, or increase the height or massing of the structures, or increase the number of units contained in the residential buildings) shall be submitted to the Director of Planning and Community Development who shall have the authority to approve such changes as immaterial changes. If the Director of Planning and Community Development determines that the proposed changes do not conform to the requirements of this Comprehensive Permit, they shall so notify the Applicant and the Applicant shall either bring the plans into conformance with this Decision or seek modification in accordance with 760 CMR 56.05(11). The Approved Plans consist of the following plan set from Patriot Engineering, Inc., Harrison Mulhern Architects, and others:

“1021 and 1025 Massachusetts Avenue, Comprehensive Permit Plan Set, (1021 Assessors Map 55, Lot 19) (1025 Assessors Map 55, Lot 20) Comprehensive Permit Plan Set, (To Accompany a Zoning Board of Appeals Application) Located in Arlington, MA dated September 19, 2022”, with revisions through February 22, 2023, prepared by Patriot Engineering, and consisting of the following sheets:

Sheet 1 Cover Sheet

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Sheet 2	Existing Conditions Plan
Sheet 3	Site Demolition Plan
Sheet 4	Site Layout and Materials Plan
Sheet 5	Erosion Control / Construction Stormwater Plan
Sheet 6	Site Grading and Drainage Plan
Sheet 7	Site Utility Plan
Sheet 8	Emergency Access Plan
Sheet 9	Site Details – I
Sheet 10	Site Details - II

“1021-1025 Massachusetts Avenue, Arlington, MA” dated September 19, 2022 prepared by Harrison Mulhern Architects, with revisions through April 14, 2023, and consisting of the following sheets:

A 1.0	Basement Floor Plan
A 1.1	Ground Floor Plan
A 1.2	Second Floor Plan
A.1.3	Third Floor Plan
A 1.4	Fourth Floor Plan
A 1.5	Fifth Floor Plan
A 1.6	Roof Plan
A 2.1	Front Elevation / Rear Elevation
A 2.2	Right Elevation / Left Elevation
A 2.3	Section Elevation
A 2.4	Section Elevation
A 2.5	Street Context Elevation
A 3.1	View from Mass. Ave
A 3.2	Aerial View

Landscaping details are contained in the drawing set entitled “1021-1025 Massachusetts Avenue” dated September 8, 2022 by KZLA, Inc. with revisions through February 17, 2023, and consisting of the following sheets:

L1	Site Preparation Plan
L2	Layout and Material Plan
L3	Planting Plan
L4	Enlarged Planting Plan
L5	Details
L6	Details

Lighting details are contained in the plan entitled “1021 Massachusetts Avenue Photometric Plan” dated September 13, 2022 prepared by Robert J. Lindstrom with revisions through January 23, 2023, and consisting of the following sheets:

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1 of 1 Lighting Layout
1 of 1 Courtyard Lighting Layout

Utility Plan entitled “Site Utility Plan details are contained in the plan entitled “Proposed Site Plan Located in Arlington, MA (Middlesex County) prepared for MAJ Investment, LLC” dated September 16, 2022, prepared by Patriot Engineering.

“Construction Management Plan” dated February 22, 2023 by Vanasse & Associates, Inc with revisions through March 17, 2023, and consisting of the following sheets:

Sheet 1	Title Sheet & Index
Sheet 2	General Notes, Legend, and Schedule
Sheet 3	Construction Details & Sign Summary
Sheet 4	Phase 1
Sheet 5	Phase 2
Sheet 6	Phase 3A
Sheet 7	Phase 3B
Sheet 8	Phase 4

- A.3 The Applicant shall be a Limited Dividend Entity as required by Chapter 40B and its successors and assigns shall comply with the limited dividend and other applicable requirements of Chapter 40B and the regulations adopted thereunder.
- A.4 The Project shall consist of not more than fifty (50) home ownership condominium units located in a single structure, and other related residential amenities, all as shown on the Approved Plans. The distribution of units shall be as presented in the Approved Plans. The Project shall also consist of approximately 1,700 square feet of commercial space on the ground floor.
- A.5 There shall be a minimum of fifty-one (51) vehicle parking spaces (inclusive of the required accessible spaces).

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- A.6 Pursuant to the revised Waiver List submitted to the Board and attached hereto as Exhibit A, the Applicant has requested, and the Board has granted, those waivers from the Arlington Zoning Bylaw and other local by-laws and regulations as specified therein. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§ 20-23. No waiver of permit or inspection fees has been granted. Any subsequent revision to the Approved Plans, including but not limited to revisions in the Final Plans, referenced below, that requires additional or more expansive waivers of any local by-laws or regulations, must be approved by the Board in accordance with 760 CMR 56.05(11).
- A.7 Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents for approval by the Director of Planning and Community Development or other Town Departments, the Director of Planning and Community Development or applicable Department Head will use reasonable efforts to review and provide a written response within thirty (30) days following submission. Should thirty (30) days elapse without a response as aforesaid, said plans or documents shall be deemed approved.
- A.8 This Comprehensive Permit may be subsequently assigned or transferred pursuant to 760 CMR 56.05(12)(b). The pledging of the Property as security under any conventional loan financing terms as set forth in the financing entity's Loan Documents or any foreclosure sale pursuant to the same shall not constitute an assignment or transfer under this paragraph.
- A.9 The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the successors and assigns of the Applicant, and the obligations shall run with the land. In the event that the Applicant sells, transfers, or assigns its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees or assignees. The applicable limited dividend restrictions shall apply to the owner of the project regardless of sale, transfer, or assignment of the project.
- A.10 The sidewalks, driveways, roads, utilities, drainage systems, and all other on-site infrastructure shown on the Approved Plans as serving the Project shall remain private in perpetuity, and the Town shall not have, now or in the future, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal and landscape maintenance. In this regard, the proposed site access ways within the Project shall not be dedicated to or accepted by the Town.
- A.11 Unless otherwise indicated herein, the Board may designate an agent to review and approve matters on the Board's behalf subsequent to this Decision.

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B. Affordability

- B.1 Except as may otherwise be allowed by the Subsidizing Agency (MassHousing or other Subsidizing Agency), pursuant to the applicable subsidy program, a minimum of twenty-five percent (25%) or thirteen (13) of the home ownership units shall be reserved for income-eligible households, meaning that they shall be sold to and occupied by households, as proposed by the Applicant, whose income (adjusted for household size) is not more than eighty percent (80%) of the Area Median Income (“AMI”), as determined by the United States Department of Housing and Urban Development (“HUD”) and the Subsidizing Agency (the “Affordable Units”). Affordable Units shall be dispersed throughout the Project in accordance with the guidelines of the Subsidizing Agency. The Board acknowledges that affordable unit location is an issue within the exclusive jurisdiction of the Subsidizing Agency.
- B.2 All of the Project’s Affordable Units shall be restricted for sale to households earning no more than the maximum allowable household income, adjusted for household size, as determined by MassHousing or any substitute Subsidizing Agency. The Affordable Units shall be maintained as affordable in perpetuity, which for the purposes of this Decision shall mean for so long as the Property does not comply with applicable zoning requirements without the benefit of this Comprehensive Permit.
- B.3 The Applicant shall obtain approval by the Subsidizing Agency of an Affirmative Fair Housing Marketing Plan (“AFHMP”) prior to the sale of any Affordable Units, and shall ensure that the Project complies with the Subsidizing Agency’s Fair Housing requirements.
- B.4 For the initial sale of the units in the Project, the maximum number of Affordable Units allowed by law that may be subject to a local preference is seventy percent (70%), if approved by the Subsidizing Agency. The Board chooses not to implement any local preference, recognizing the regional need for affordable housing is paramount.

C. Submission Requirements

- C.1 Prior to any construction or site development activities (including site clearing, tree removal, grading, etc.) on the Property, whether or not pursuant to a building permit (except as allowed by the Director of Planning and Community Development, as noted below), the Applicant shall:
- a. Deliver to the Board a check in a reasonable amount determined by the

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Director of Planning and Community Development to be used for staff to retain outside experts, if necessary, for technical reviews and inspections required under these conditions but at inception shall not exceed \$6,500 unless an alternate amount has been agreed upon by the Board and the Applicant. Outside peer review shall only be used if Town staff is not reasonably able to review a particular aspect or aspects of the Final Plans. Said funds shall be deposited by the Board in an account pursuant to G. L. c. 44, § 53G and shall only be used for technical reviews and inspections associated with this Project. Any unspent funds shall be returned to the Applicant with accrued interest at the completion of the project. If at any time the Board reasonably determines that there are insufficient funds to cover the costs of technical reviews, it shall inform the Applicant and the Applicant shall forthwith deliver additional funds as specified by the Board in a reasonable amount as may be determined by the Board. Said funds may be used by the Board to hire civil engineering, traffic engineering, and/or other professionals that the Board deems reasonably necessary to ensure compliance with the conditions hereof.

- b. Obtain and file a copy of a National Pollution Discharge Elimination System (NPDES) Permit from the U.S. Environmental Protection Agency (EPA), if necessary. The Board shall also be provided a copy of the Stormwater Pollution Prevention Plan (SWPPP) submitted along with any required NPDES filing.
- c. Submit to the Board for review and administrative approval the following final drawings and plans ("Final Plans") for review and approval by the Town, such approval to be that the plans conform to the requirements of this Comprehensive Permit and incorporate the relevant conditions herein. The Final Plans shall also incorporate all relevant conditions and requirements of permitting agencies having jurisdiction.
 - i. Final Civil Engineering Drawings and Plans with applicable sheets signed and sealed by the Professional Land Surveyor of record and the Professional (Civil) Engineer of record.
 - ii. Final Architectural Plans signed and sealed by the Registered Architect of record.
 - iii. Final Landscape Plans signed and sealed by the Registered Landscape Architect of record.
 - iv. Final Lighting Plans signed and sealed by a Professional Engineer.

The Final Plans shall be submitted to the Board at least thirty (30) days prior to the anticipated date of commencement of building construction or submission of an application for building permits, whichever is earlier (the

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“Final Site Plan Submission Date”).

All plantings shall consist of native, non-invasive, drought-tolerant species. Plantings installed along drives and walkways shall also be salt-tolerant. Requirements for maintenance, monitoring, and replacement of plants and trees shall be as agreed to by the Applicant and as detailed in Condition I.17. The complimentary conditions from the Order of Conditions are Conditions J.47 and J.48. The Condominium documents shall address ongoing maintenance of landscaping features.

- d. Submit to the Director of Planning and Community Development the Final Construction Mitigation Plan including, but not limited to, dust control measures, fill delivery schedules, stockpiling areas, and like matters. Other than site work and such other work as may be authorized in writing by the Director of Planning and Community Development, no other construction of units shall commence and no building permits shall be issued under this Comprehensive Permit until the Director of Planning and Community Development and other applicable staff has approved the Final Plans as being in conformance with this Decision. If no written response or comments have been given to the Applicant by the Director of Inspectional Services and/or Director of Planning and Community Development concerning the Final Site Plans within thirty (30) days after the Final Site Plan Submission Date, the Final Plans, as delivered, will be deemed to have been approved.
 - e. The Applicant shall include on the Final Plans all of the various changes that have occurred during the hearing process. These plans should reflect site plan changes including but not limited to surface parking, proposed grading, stormwater systems, garage elevation, and other relevant site features.
 - f. The Final Plans shall show designated snow storage areas or the snow shall be removed from the site.
 - g. The Applicant must provide notification to the Arlington Assessor’s Office for address and unit numbering.
- C.2 Prior to the issuance of any building permits, the Applicant shall:
- a. Record this Comprehensive Permit with the Middlesex South Registry of Deeds, at the Applicant’s expense, and provide proof of such recording to the Board.

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- b. Submit to the Board and the Director of Planning and Community Development evidence of Final Approval from the Subsidizing Agency, as required by the Project Eligibility letter and the Chapter 40B regulations.
- c. Submit to the Board a copy of the Regulatory Agreement and Monitoring Services Agreement for the Project. Execution and recording of such Regulatory Agreement with DHCD shall be complete prior to the issuance of any building permit. It is understood and agreed that Monitoring provisions may be included with the Regulatory Agreement, in lieu of a separate Monitoring Services Agreement.
- d. Submit to the Director of Inspectional Services final Architectural Plans prepared, signed and sealed by an architect with a valid registration in the Commonwealth of Massachusetts (“Architectural Plans”). The Architectural Plans shall be submitted in such form as the Director of Inspectional Services may request pursuant to the State Building Code.
- e. An automatic sprinkler system conforming with NFPA 13 and a fire alarm system conforming to NFPA 72 shall be required in all residential buildings. Both systems shall be monitored by a UL approved central station monitoring service.
- f. Obtain and file with the Director of Inspectional Services a copy of all required Federal, State, and local permits and approvals required to begin construction of the Project.
- g. Obtain all necessary demolition, building, electrical, plumbing, and associated permits required to begin construction of the Project required by state law. It is understood that compliance with this requirement is part of the building permit process, rather than required prior to the issuance of building permits.
- h. The Applicant will be responsible for all applicable sewer permit, capacity impacts and privilege fees, as applicable. Notwithstanding anything contained herein, the Applicant shall not be responsible to pay for inflow and infiltration fees.
- i. The Applicant will be responsible for all applicable water and sewer system fees as per officially promulgated fee schedules uniformly applicable to all other Town of Arlington projects. Notwithstanding anything contained herein, the Applicant shall not be responsible to pay for inflow and infiltration fees.

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- j. The Applicant shall perform additional test pits at the proposed stormwater basins to confirm groundwater elevations. These test pits shall be done during seasonal high groundwater conditions and shall be witnessed by the Town and/or its agent.
- k. The Applicant shall receive written approval from the Arlington Fire Chief or his/her designated representative for the proposed building emergency services access to the site prior to issuance of a building permit.

D. Construction Completion/Certificate of Occupancy

D.1 Prior to issuance of a certificate of occupancy for any structure in the Project, the Applicant shall:

- a. Submit engineer's interim certification of compliance with utilities plan and profiles for such Phase (as applicable) to the Director of Inspectional Services.
- b. Provide a letter to the Board, signed by the Applicant's civil engineer, certifying that the structure and supporting infrastructure has been constructed in compliance with the Final Plans in all material respects.
- c. Obtain acceptance from the Arlington Fire Department of testing of all fire protection systems, fire alarm systems, fire sprinkler systems, and local smoke alarms within the dwelling units of the structure.
- d. Obtain a sewer connection sign-off from the Arlington Department of Public Works for the structure.

D.2 Prior to issuance of the certificate of occupancy for the Project, the Applicant shall:

- a. Submit to the Board, in digital file format and full-size paper copies, a final as-built plan including profiles, showing actual-in ground installation of all applicable utilities, rim and invert elevations, roadway, sidewalk and associated construction. The file format shall be in AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet.

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- b. Submit to the Board, for review by its Counsel, a copy of the Condominium Master Deed, Condominium Trust, and Rules and Regulations (hereinafter collectively referred to as “Condominium Documents”) to ensure such documents including, without limitation, the Master Deed contain a provision that the Condominium is subject to this Decision. The Condominium Documents shall specifically address issues relating to public access to the retail space, snow removal, trash removal, potential additional electric vehicle charging stations, and maintenance of the restored woodland and meadow.
- D.3 Prior to the issuance of a certificate of occupancy, the Applicant is required to request the two (2) existing on-street parking spaces in front of the Project adjacent to the driveway be designated as short-term parking or loading spaces. This request is made to improve the sight lines from the proposed driveway. Such request is to be made to the Select Board.

E. Project Design and Construction

- E.1 Prior to the commencement of any work on the Property, the Applicant and the site general contractor shall attend a preconstruction conference with representatives from the Arlington Fire Department, the Department of Public Works (Arlington Water and Sewer Division and Engineering Division), the Department of Planning and Community Development, the Inspectional Services Department, and other Town staff and consultants as may be determined.
- E.2 Upon reasonable notice and subject to construction activity, the Applicant shall permit representatives of the Board to observe and inspect the Property and construction progress until such time as the Project has been completed and the final occupancy permit issued.
- E.3 The proposed construction shall be in accordance with applicable Federal and State laws, rules and regulations.
- E.4 All site retaining walls four (4) feet or greater in height shall be designed by a Massachusetts Professional Structural Engineer.

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- E.5 During construction, the Applicant shall conform to all local (except as waived herein), State, and Federal laws and provide advance notice to abutters per the Town's Residential Construction Control Agreement regarding noise, vibration, dust, and blocking of Town roads in order to accommodate delivery of materials to the site or for other construction staging purposes. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Adequate provisions shall be made by the Applicant to control and minimize dust on the site during construction in accordance with the construction mitigation plan. The Applicant shall keep all portions of any public way used as access/egress to the Project free of soil, mud or debris deposited due to use by construction vehicles associated with the Project.
- E.6 Appropriate signage shall be shown on the Final Plans, consistent with the sign information shown on the Approved Plans. A temporary sign including the name and address of the project and contact information for the Applicant, general contractor, engineers, architect, and other relevant parties shall be posted on site for the duration of construction operations.
- E.7 The location of all utilities, including but not limited to electric, telephone, and cable, shall be shown on the Final Plans. All transformers and other electric and telecommunication system components shall be included on the Final Plans.
- E.8 The Project shall be all-electric, including heat, hot water, and appliances. A natural gas service is to be provided solely to serve a backup generator for the elevator as required under state law.
- E.9 The Applicant shall install lighting on the site that conforms to the Town of Arlington's Zoning Bylaw and Town Bylaw and approved Lighting Plan referred to in Condition A.2. Management of outdoor lighting shall be the responsibility of the Applicant.
- E.10 Utilities, including but not limited to telephone, electric, and cable, shall be located underground. The general contractor shall be responsible for coordinating all subsurface work with Dig Safe prior to the commencement of any excavation.
- E.11 Soil material used as backfill for pipes, access drives, or structures shall be certified by the Geotechnical Engineer to the Director of Inspectional Services as meeting design specifications, as applicable.

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- E.12 The Applicant shall test the soil during construction to confirm soil types in the areas of the infiltration system. Such testing shall be witnessed by the Board's designee. All unsuitable material, if any, discovered in excavation for the infiltration system shall be removed and disposed of in accordance with State and local regulations.
- E.13 Construction activities shall be conducted between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. There shall be no construction activities on Sundays and legal holidays. For purposes of this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; delivery or removal of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; loading of construction dumpsters and erection of new structures. All off-site utility work shall be coordinated and approved by the Department of Public Works and shall not be subject to the timing restrictions set forth above. Parking of all vehicles and equipment must be on the Property during construction.
- E.14 Burning or burial of construction or demolition debris on the site is strictly prohibited. All such materials are to be removed from the site in accordance with applicable law. During construction, the site shall be secured against unauthorized entry or vandalism by fencing, or other appropriate means, and all construction materials shall be stored or stockpiled in a safe manner. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.
- E.15 No areas shall be left in an open, unstabilized condition longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished in accordance with the Approved Landscape Plans.
- E.16 All dumpsters and other trash and recycling containers serving the Project shall be enclosed and covered (with the exception of construction dumpsters used during construction). The Board shall review the dumpster location as part of the approval of the Final Plans if different from what has been shown on the Approved Plans.

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- E.17 All retaining walls visible from a public way or direct abutters, as determined by the Director of Inspectional Services based upon the time of year when such walls would be most visible, shall be constructed in an aesthetic manner. Specifically, retaining walls shall avoid the use of exposed concrete (similar to a foundation wall) to the greatest extent practicable.
- E.18 Snow may only be stored within the areas of the Property designated for that purpose on the Approved Plans. To the extent snowfall exceeds the capacity of the designated snow storage areas, the Applicant shall truck the excess snow off-site. Snow may not be placed in or adjacent to resource areas.
- E.19 The Applicant shall comply with all applicable local, state and federal requirements relating to noise from construction activities, including the regulations contained at 310 CMR 7.10 and the DEP's Noise Policy contained in DAQC Policy 90-001 as well as the Arlington Noise Abatement Bylaw contained at Title V, Section 12 except as waived. The Applicant shall also implement all necessary controls to ensure that vibration from construction activities does not constitute a nuisance or hazard beyond the Property. Upon notification from appropriate municipal officials, the Applicant shall cease all construction activities creating noise in excess of state and federal standards, and shall implement such mitigation measures as is necessary to ensure the construction activity will comply with applicable State and Federal requirements.
- E.20 The Applicant is responsible for the sweeping, removal of snow, and sanding of the internal roadways, driveways, walkways, and sidewalks providing access to both the residents of the Project and emergency vehicles. Neither snow nor sand may be placed in or adjacent to resource areas.
- E.21 The Applicant shall maintain all portions of any public road, whether state or local roads, used for access to the Property by construction vehicles, free from soil, mud or debris deposited due to such use during the duration of construction.
- E.22 The Applicant shall comply with DPW requirements regarding curb-cut permits.
- E.23 To the extent earth removal is necessary, the Applicant shall prepare an earth removal plan, showing all necessary cuts and fills, and describing the number of truck trips necessary for the earth removal. A copy of the plan will be kept on file at the jobsite.
- E. 24 All catch-basins shall have oil/water separators as shown on the Approved Plans.

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- E. 25 Project sidewalks and pathways/walkways shall be compliant with the requirements of the Americans with Disabilities Act (“ADA”) and the requirements of the Massachusetts Architectural Access Board (“AAB”).
- E. 26 This Comprehensive Permit shall be a master permit which is issued in lieu of all other local permits or approvals that would otherwise be required, except for the issuance of Building Permits and Certificates of Occupancy by the Inspectional Services Department under the State Building Code; provided, however, the Applicant shall pay all local fees for such permits or approvals as published in the Town regulations or bylaws, including but not limited to building permits, inspections, water and sewer connections, and curb cuts, specifically excluding inflow and infiltration fees.
- E.27 The Applicant shall perform a preconstruction and post-construction survey of abutting properties including photographs and/or video in order to document preconstruction and post-construction conditions.
- E.28 The Applicant shall monitor vibrations in the vicinity of the Property throughout the course of construction. Prior to the commencement of construction, the Applicant shall submit a plan/proposal for review by the Board for the monitoring of vibrations in the vicinity of the Property.
- E.29 The Applicant has submitted truck path diagrams to the Board showing turning paths for construction vehicles approaching and accessing the site. The diagrams were prepared by Vanasse & Associates dated March, 2023. The truck paths shall be maintained free of stockpiles, stored equipment, debris, and other construction materials to ensure adequate construction and emergency access. Truck access to the site and egress from the site shall be the westbound lane of Massachusetts Avenue only.
- E.30 The Applicant shall hire a licensed Pest control company to conduct a comprehensive assessment of pest activity on the property and then develop and implement an Integrated Pest Management Plan for all phases of the project (before construction, during construction, and post-occupancy). The use of second-generation anticoagulant rodenticides is prohibited.
- E.31 To support the proposed basement bicycle storage area, the interior dimensions of at least one elevator are to accommodate a standard bicycle with both wheels on the ground. The interior finish of the elevator cab is to be sufficiently durable to withstand abuse from bicycle traffic on the elevator.
- E.32 Any fence installed along the property boundary shall be wood and installed so the finished side faces the abutting property.

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F. Traffic/Traffic Safety Conditions / Sidewalks

- F.1 Site access will be provided via Massachusetts Avenue. Construction truck access shall be from the westbound lane of Massachusetts Avenue only.
- F.2 The Applicant shall install all proposed traffic signs and pavement markings shown on the approved final plans. Signs and markings shall conform to the Manual on Uniform Traffic Control Devices (MUTCD), latest edition and other applicable state or local requirements.
- F.3 The proposed site provides fifty-one (51) structured garage parking spaces including ten (10) compact-sized parking spaces and two (2) accessible parking spaces. No changes to the number, configuration or designation of parking spaces shown on the Approved Plans shall be made unless approved by the Board through a modification process.
- F.4 The Applicant shall ensure that emergency services can adequately maneuver through the site. The Arlington Fire Department shall review the Final Plans to ensure compliance with this condition.
- F.5 The Applicant shall provide seventy-five (75) long-term bicycle parking spaces that are covered and secure.
- F.6 The Applicant shall provide eight (8) outdoor short-term bicycle parking spaces. These spaces shall be near a location of public building access, such as the courtyard area.
- F.7 The Applicant shall provide new residents with transportation information packets with information on getting around Arlington sustainably.
- F.8 The Applicant shall provide electric vehicle charging stations at eleven (11) parking spaces in the garage. The Condominium Documents shall include a provision allowing for the future expansion of the number of charging stations in accordance with tenant demand.
- F.9 Each dwelling unit shall be provided one (1) parking space to be allocated by the Condominium Association.
- F.10 The Applicant is to upgrade the existing crosswalk in front of 990 Massachusetts Avenue to improve the safety of residents traveling to public playgrounds at Robbins Farm Park and Cutter School Park. The crosswalk shall have A.D.A. and A.A.B. compliant curb cuts, striping, and signage.

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- F.11 The Applicant is to provide a bicycle maintenance stand for the residents to encourage the use of bicycles by making it more convenient to tune and repair bicycles on site.

G. Police, Fire, and Emergency Medical Conditions

- G.1 The Condominium Association shall provide an emergency contact name and telephone number for a representative of the unit owners to the Arlington Police Department and Fire Department.
- G.2 Stairwells and garages must provide the required fire rated separation. Residential units must have a minimum one-hour fire rated separation.
- G.3 Compliance with all State Building Code and NFPA requirements relating to fire access and safety shall be met.
- G.4 All elevators must have emergency battery or generator backup as required by the Massachusetts State Elevator Code.
- G.5 The Project shall maintain access for fire department personnel to all four sides of the residential structure at all times.
- G.6 The Project shall provide adequate external lighting to ensure safety of the residents of the Project. External lighting shall conform to the requirements of the local Regulation of Outdoor Lighting [Title V, Section 14].
- G.7 During times of construction, the Project, including all structures, shall be accessible to Fire Department and other emergency vehicles. Additionally, all hydrants shall be operational during construction in accordance with NFPA requirements. Standpipes shall be operational on each floor during construction, as required by the Building Code and the Fire Department.
- G.8 The Applicant shall consult with the Fire Department prior to the commencement of construction to provide an on-site emergency plan, which shall be updated as necessary throughout the construction process.
- G.9 During construction, the Project shall have a superintendent on-site during working hours to address security and traffic concerns with the Police Department.

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H. Water, Sewer and Utilities

- H.1 The Applicant shall be responsible for the design and installation of the utilities servicing the Project.
- H.2 All water and sewer infrastructure shall be installed in conformance with the Arlington Water and Sewer Division's technical requirements. The Applicant shall provide the Arlington Water and Sewer Division with calculations to ensure the distribution system for the area has the necessary capacity to meet system demand required prior to the commencement of construction.
- H.3 Fire hydrants shall be placed as shown on the Approved Plans in locations approved by the Arlington Fire Department. If the Arlington Fire Department approves different hydrant locations, such modification shall be accepted administratively as an insubstantial change pursuant to 760 CMR 56.05(11).
- H.4 The service size for the domestic water service should be verified by the Arlington Water and Sewer Division and information on the fire service size and requirements should be verified by the Arlington Fire Department. The Applicant shall submit information regarding the size of both the domestic and fire services as part of Final Plans, after consultation with the Arlington Water and Sewer Division. Any connections to the Town water main shall be triple-gated and a tee connection.
- H.5 The water and sewer utilities servicing the buildings in the Project shall be installed and tested in accordance with applicable Town requirements and protocols, except as may be waived herein.
- H.6 Utilities shall be installed underground by the Applicant using methods standard to those installations. Utilities shall be defined as electric service lines, telephone lines, water service lines, CATV lines, municipal conduit and the like. The Applicant shall request a Grant of Location from the Select Board for any installation of new utility poles or underground conduit in the public right of way as needed.
- H.7 The Applicant shall be responsible for all trash, recycling, and yard waste removal from the Property. The Town of Arlington shall not have any responsibility for trash, recycling, compost, and/or yard waste pickup at the Property.
- H.8 Utility meters, where required to be mounted externally, are to be located on the sides of the building. Do not mount utility meters or other structures on the front of the building.

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I. Wetlands/Floodplain/Environmental Conditions

- I.1 Prior to the commencement of construction, erosion control measures shall be installed consistent with the Approved Plans.
- I.2 While no dewatering is anticipated by the Applicant, any water discharged as part of any dewatering operation shall be passed through filters, on-site settling basins, settling tank trucks, or other devices to ensure that no observable sediments or pollutants are carried into any Resource Area, street, drain, or adjacent property. Any catch basins, drains, and outfalls to be used in dewatering operations shall be cleaned out before operations begin.
- I.3 No uncovered stockpiling of materials shall be permitted within the 100 foot Wetland Buffer Zone or AURA or other resource areas.
- I.4 No dumpsters shall be allowed within the AURA or other Resource Areas.
- I.5 No heavy equipment may be stored or serviced within the AURA or other Resource Areas.
- I.6 Any dirt or debris spilled or tracked onto any paved streets shall be swept up and removed daily.
- I.7 The Applicant must retain a professional engineer to oversee the installation of the stormwater management system. A stormwater mitigation report must be submitted to the ZBA within 10 days of the completion of the stormwater management system. The stormwater report shall include as-built plans, photographs from installation, and a written summary of the installation of the stormwater management system and stormwater best management practices.
- I.8 To avoid adding excess nitrogen runoff, the Applicant shall only treat the planted areas within resource areas with slow-release nitrogen fertilizer. Application of this fertilizer cannot occur in the summer, or after storm events. Lawn fertilizer shall only be applied twice a year, in spring and fall. The application of plant nutrients shall otherwise comply with 330 CMR 31.00. No other herbicides or treatment methods are approved. No pesticides or rodenticides shall be used to treat pest management issues within Resource Areas. These shall be continuing conditions in perpetuity that survives the expiration of this permit.

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- I.9 Pervious surfaces shown on the project plans shall be maintained as specified in the stormwater report and logs/reports shall be maintained by the Applicant. Pervious surfaces shown on the project plans shall not be replaced by impervious surfaces. This shall be a continuing condition in perpetuity that survives the expiration of this permit.
- I.10 No snow storage is permitted within the AURA or other Resource Areas. A snow storage plan shall be submitted to the ZBA prior to construction completion. If these areas are insufficient for storage during the snow season, snow shall be removed from the site. Sediments and debris shall be removed from snow storage areas in the early spring. This shall be a continuing condition in perpetuity that survives the expiration of this permit.
- I.11 The Applicant shall protect all adjacent catch basins using silt socks during construction.
- I.12 The Applicant shall conduct catch basin sump cleanings at the end of the project work period.
- I.13 The Applicant shall submit copies of the SWPPP inspection reports to the ZBA within 10 days of the date of each report.
- I.14 The Applicant shall submit for review and approval by the ZBA an invasive management plan for work in the AURA and other Resource Areas in compliance with the *Order of Conditions* (Condition J.52)
- I.15 All mitigation plantings and all plantings within the Resource Areas shall be native and be installed and maintained according to the standards of the American Association of Nurserymen (AAN). In the event that the AAN ceases to exist or to issue or maintain relevant standards, such plantings shall be installed and maintained in accordance with standards established by a successor organization, if any, and if there is no successor organization, then a generally acceptable standard setting organization satisfactory to the Conservation Commission. This shall be a continuing condition in perpetuity that survives the expiration of this permit. An irrigation system shall be installed to provide adequate and appropriate water for the plantings.

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- I.16 All plantings planted and invasive species removed through this project in Resource Areas or as mitigation shall be monitored for three years. The off-site Riverfront Restoration Area on the Millbrook Condominiums property shall be monitored for two years. After installation is complete, a monitoring report shall be submitted annually by November 15th for the three year and two year monitoring periods, reporting on the health of the new plantings and the success of the invasive plant management. The annual report shall identify any plantings that did not survive and summarize the replacement of the plantings. A survival rate of 90% for trees and at least 80% for other vegetation in the planting plan must be achieved at the end of the third monitoring year. If the survival rate of the plantings after the third year is lower than that listed above, the Applicant must submit recommendations for replacements to the ZBA for approval.

After the initial three-year monitoring period for the on-site restored woodland, annual monitoring reports will be provided to the Arlington Zoning Board of Appeals and Conservation Commission by November 15th of every year for an additional 7-year monitoring period, so that the monitoring period is 10 years after installation of the restored woodland. These additional monitoring reports will describe the condition of the restored woodland, overview the management efforts undertaken over the past growing season (such as plant replacement, invasive species management, etc.), and describe the anticipated management efforts required for the subsequent growing season so that the restored woodland successfully matures as designed. These additional monitoring reports shall include representative photographs of the restored woodland from photographic stations established within the woodland, such that year to year images can be compared.

Regarding invasive species management, the restored woodland and off-site Riverfront Restoration Area shall be managed for invasive species during their respective monitoring periods to determine if any invasive/exotic plants included on the Invasive Plant list provided by the Massachusetts Invasive Plants Advisory Group have colonized the restored woodland and/or off-site Riverfront Restoration Area on the Millbrook Condominium property. Specifically, these areas shall be evaluated once annually during the late spring/early summer to detect invasive exotic plants prior to seed production.

Observed invasive plants shall be removed from the site either by hand or with hand tools (shovels, weed wrenches, etc.) to the extent practicable and appropriately disposed of off-site. If non-mechanical removal is not practical, then the stem shall be cut flush to the ground in the late summer prior to seed production, and the cut stem shall immediately be painted or dabbed with glyphosate by a certified herbicide applicator.

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Upon removal of invasive shrubs or saplings, if necessary, native shrubs or saplings from the approved restoration planting plan shall be installed to adequately re-vegetate the exposed area. Replacement native shrubs or saplings shall be selected based on the size and type referenced for the area on the approved restoration plan, or functional equivalent native shrub or sapling at the discretion of the landscape architect or wetland scientist conducting the annual monitoring and overseeing the management efforts.

Upon the removal of native groundcover plants or perennials, the native seed mixture referenced on the approved restoration planting plan shall be applied to the managed area and raked in per the manufacturer's specifications.

In creating the initial Condominium annual budget, and for the annual budgets thereafter, the Applicant or Condominium Association, as applicable, shall include a separate line item in the budget for the anticipated expenses relating the satisfying the obligations of this condition.

- I.17 The Applicant shall protect all area trees on the Property per the Town Wetlands Protection Regulations, Section 24 Vegetation Removal and Replacement, protecting trees through securing (not nailing) 2x4 boards, between 6-8 feet in length, around tree base. The boards shall be installed vertically such that one end is installed directly into the ground. Alternative protection measures must be approved by the ZBA.
- I.18 All on-site mitigation as proposed as part of this project shall remain in perpetuity. The approved planting areas, invasive removal areas, the water quality units, and the stormwater system shall remain in perpetuity and if replacement is necessary, shall be subject to the approval of the Commission. This shall be a continuing condition in perpetuity that survives the expiration of this permit.
- I.19 The fencing surrounding the woodland in the rear yard shall be constructed of cedar and have sufficient clearance below the bottom rail to allow small animals to migrate to and between adjacent resource areas.
- I.20 To protect the restored woodland and meadow areas in the rear yard as they grow and mature, no unleashed pets are to be allowed.
- I.21 Impervious pavement in the patio area at the front of the building is to be pitched as best as practical to direct surface water towards the landscaped areas instead of towards the street.

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- I.22 The Project is to maintain existing drainage patterns at the property boundary so that no runoff is directed to abutting properties or that runoff from abutting properties is not otherwise blocked from following the flow path prior to development of this Project.
- I.23 To mitigate the increase of impervious area on the site and the significant loss of existing tree canopy, the Applicant is to provide three (3) additional street trees of the same size and species as the street trees provided on the project site to be planted along Massachusetts Avenue in the area of the Project under the direction of the Tree Warden. If the Tree Warden determines that trees cannot be placed along Massachusetts Avenue in the area of the Project, this condition shall be void.

J. Order of Conditions under the Wetlands Protection Act

Per agreement between the Applicant, the Board, and the Conservation Commission (the "Commission"), the *Order of Conditions* (apart from the Standard Conditions) issued under the Commission's Review under the Wetlands Protection Act are included here in the written decision for reference.

Standard Conditions

- J.1-J.20 Standard Conditions from Massachusetts Department of Environmental Protection as recorded in the Commission's written decision.

Pre-Construction

- J.21 Work permitted by this Order shall conform to the Notice of Intent, the approved plans and documents (listed above), and oral representations (as recorded in hearing minutes) submitted or made by the Applicant and the Applicant's agents or representatives, as well as any plans and other data, information or representations submitted per these Conditions and approved by the Commission.
- J.22 The provisions of this Order shall apply to and be binding upon the Applicant and Applicant's assigns, tenants, lessees, property manager, employees, contractors, and agents.
- J.23 The Applicant shall ensure that a copy of this Order, with any referenced plans, is always available on site, and that contractors, site managers, foremen, and sub-contractors understand its provisions.

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- J.24 The lead contractor shall sign and return to the Conservation Agent an acknowledgment that contractors, site managers, foremen, and sub-contractors cannot deviate from the approved plans without Commission approval.
- J.25 If there are conflicting conditions within this Order, the stricter condition(s) shall govern.
- J.26 No work shall begin under this Order until: (a) all other required permits or approvals have been obtained and (b) the appeal period of ten (10) business days from the date of issue of this Order has expired without any appeal being filed, and (c) proof that this Order has been recorded in the Registry of Deeds has been submitted to the Conservation Agent.
- J.27 Prior to any work on the site, or within six (6) weeks of the date of this Order, whichever comes first, this Order of Conditions and relevant attachments, including any and all operations and maintenance plans, shall be recorded at the Middlesex Registry of Deeds or Land Court, and notice filed with the Commission. Failure to do so shall be deemed cause to revoke this Order.
- J.28 Prior to starting work, the Applicant shall submit to the Commission the names and 24-hour phone numbers of project managers or the persons responsible for site work or mitigation.
- J.29 Before work begins, erosion and sediment controls shall be installed at the limits of the work area or as outlined on the approved plans. Unless otherwise specified, erosion controls will include a silt fence and a biodegradable 12-inch diameter mulch sock around the entire work area. Hay bales are not allowed.
- J.30 Prior to any work commencing, a sign no less than 2 square feet or more than 3 square feet, visible from the street, shall be displayed reading "MA DEP File # 091-0335" and not placed on a living tree.
- J.31 The contractor shall contact the Conservation Agent (concomm@town.arlington.ma.us; 781-316-3012) at least 72 hours prior to commencement of work to arrange for a pre-construction meeting with the on-site project manager to walk through the Order of Conditions for Work, confirm the concrete wash out location, and walk the site to confirm the installation and placement of erosion controls prior to the start of any grading or construction work.
- J.32 The Commission, its employees, and its agents shall have the right of entry onto the site to inspect for compliance with the terms of this Order of Conditions until a Certificate of Compliance has been issued.

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J.33 Any backfill or reuse of on-site materials shall be free of contamination in accordance with the Massachusetts Contingency Plan, 310 CMR 40.0000. All fill used in connection with this project shall be clean borrow. The following shall be prohibited: concrete and asphalt rubble; crushed glass; stumps, invasive plants or debris, and other solid waste or anthropogenic materials.

J.34 Any access agreement required for the offsite enhancement area shall be completed and provided to the Conservation Commission prior to commencement of construction.

Dumpsters

J.35 All dumpsters shall be located outside of any Resource Area unless otherwise approved by the Commission.

Stockpiling

J.36 Any stockpile of soil, sand, or similar materials that is permitted within said areas shall be enclosed within a line of entrenched and staked mulch socks or silt fence in addition to the perimeter erosion controls for the site. In the event that all earthwork ceases for more than 15 days or if inclement weather is imminent, all exposed stockpiled soils shall be stabilized with a temporary vegetative cover, tarp, or other erosion control acceptable to the Conservation Commission.

Erosion

J.37 Areas that are disturbed by construction and access activities shall as soon as possible be brought to final grade and reseeded and restabilized and shall be done so prior to the removal of the erosion control barrier. Erosion control measures shall be installed per the approved plans or as directed by the Conservation Agent.

J.38 The Conservation Commission and its Agent shall have reasonable discretion to require additional erosion/siltation control methods during construction if necessary.

J.39 Upon completion of the project, the applicant shall remove and legally dispose off-site of all temporary erosion controls and other materials determined to be detrimental to the resource areas if left in place permanently.

Equipment

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- J.40 No heavy equipment may be stored overnight within 100 feet of the wetland. No refueling or maintenance of machinery shall be allowed within the 100-foot Buffer Zone or 100-foot inner riparian area unless otherwise approved by the Commission.
- J.41 Construction entrances shall be used and maintained only where noted on approved plans.
- J.42 Arrangements shall be made for any rinsing of tools, equipment associated with on-site mixing or use of concrete, rubber, or other materials such that the wastewater is disposed of in the concrete wash out station. In no case may waste water be discharged into or onto Resource Areas on or adjacent to the site. In no case may waste water be placed in storm drains. Any spillage of materials shall be cleaned up promptly.
- J.43 If vehicle washing is proposed onsite, contact the Arlington Conservation Commission and/or Conservation Agent (concomm@town.arlington.ma.us: 781-316-3012) to determine appropriate location so as to not impact Mill Brook.

Sweeping

- J.44 Any dirt or debris spilled or tracked onto any paved streets shall be swept up and removed daily.
- J.45 The areas of construction shall remain in a stable condition at the close of each construction day.

Dewatering

- J.46 Any dewatering operations shall conform to the following:
- a. If dewatering is needed, the Applicant must submit for review a dewatering plan to the Conservation Agent.
 - b. Any catch basins, drains, and outfalls to be used in dewatering operations shall be cleaned out before operations begin.
 - c. Any water discharged as part of any dewatering operation shall be passed through filters, on-site settling basins, settling tank trucks, or other devices to ensure that no observable sediments or pollutants are carried into any Resource Area, street, drain, or adjacent property.

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- d. Measures shall be taken to ensure that no erosion or scouring shall occur because of dewatering operations.
- e. Dewatering shall occur only where noted on approved plans.

Plantings and Vegetation

- J.47 All mitigation plantings in the restored woodland and meadow shall be as specified in the planting plan of April 13, 2023, and installed and maintained according to the standards of the American Association of Nurserymen (AAN). All on-site native mitigation plantings shall be monitored for three (3) full growing seasons after installation is certified by the environmental monitor as complete. A survival rate of 90% of trees and at least 80% of other vegetation in the planting plan must be maintained and demonstrated, at the end of the monitoring period unless otherwise approved by the Commission.
- J.48 Based on the Applicant's agreement with the Conservation Commission to adhere to the conditions in the ZBA's Comprehensive Permit, after the initial three year monitoring period for the on-site restored woodland, annual monitoring reports will be provided to the Arlington Zoning Board of Appeals and Conservation Commission by November 15th of every year for an additional 7-year monitoring period so that the monitoring period is 10 years after installation of the restored woodland. These additional monitoring reports will describe the condition of the restored woodland, overview the management efforts undertaken over the past growing season (such as plant replacement, invasive species management, etc.), and describe the anticipated management efforts required for the subsequent growing season so that the restored woodland successfully matures as designed. These additional monitoring reports shall include representative photographs of the restored woodland from photographic stations established within the woodland, such that year to year images can be compared.
- J.49 All enhancement plantings in the off-site area adjacent to Mill Brook shall be as specified in the planting plan of April 13, 2023, and installed and maintained according to the standards of the American Association of Nurserymen (AAN). All off-site native enhancement plantings shall be monitored for two (2) full growing seasons after installation is certified by the environmental monitor as complete. A survival rate of 90% of trees and 80% of other vegetation in the off-site area planting plan must be maintained and demonstrated at the end of the monitoring period, unless otherwise approved by the Commission.

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- J.50 A monitoring report shall be submitted annually to the Conservation Agent in November for the monitoring periods as stated in Conditions #47, #48, and #49. The reports shall include the number and types of restoration plantings evaluated, condition of the plantings, and status of invasive plant removal. The Applicant must provide a monitoring report by a qualified consultant for survival of all approved plantings. The monitoring report must include measures to remove invasive species if they are discovered.
- J.51 Any planting areas provided as mitigation (restored woodland and meadow) shall be maintained in perpetuity. This shall be a continuing condition that survives the expiration of this Order and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.
- J.52 The invasive species management set forth on the approved plans (Document #1.k.iii) for the restored woodland and meadow mitigation areas on-site shall be ongoing. This shall be a continuing condition that survives the expiration of this Order and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.
- J.53 There shall be no dumping of woody vegetation, leaves, grass clippings, brush, or other debris into a wetland resource area or associated buffer zones. This shall be a continuing condition that survives the expiration of this Order and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.

Fertilizer and Chemical Use

- J.54 To avoid adding excess nutrient runoff, the Applicant shall only treat existing lawn area with no phosphorous, low nitrogen, slow-release fertilizer and it shall be applied at the lowest rate necessary. Any application of phosphorus-containing fertilizers for new lawn must be first reviewed and approved by the Conservation Agent. Except for the establishment of vegetation in the first growing season, the Application of lawn fertilizer cannot occur in the summer, or before or after storm events. Lawn fertilizer shall at most be applied twice a year. This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.
- J.55 No pesticides or rodenticides shall be used to treat pest management issues. This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.
- J.56 No herbicides or chemical treatment methods are permitted except as approved per the invasive management plan (Document #1.k.iii).

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Pervious Surfaces

- J.57 Pervious surfaces shown on the approved project plans (Document #1.k and #1.l) shall be maintained and not be replaced by impervious surfaces. This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.

Stormwater

- J.58 The Applicant shall protect all adjacent catch basins using silt sacks.
- J.59 The project shall not cause an increase in run-off or stormwater volume onto adjacent properties, either during construction or when completed.

Snow and Deicing

- J.60 Dumping of snow into resource areas is prohibited and shall comply with the current Mass. DEP Bureau of Water Resources Snow Removal Guidance.
- J.61 Deicing chemicals containing sodium, potassium, and calcium chloride are prohibited from use in the wetland resource area and the associated 100-foot buffer. An alternative deicing product such as magnesium chloride (MgCl) may be used as recommended in the Winter Parking Lot and Sidewalk Maintenance Manual published by the Minnesota Pollution Control Agency, <https://www.pca.state.mn.us/sites/default/files/p-tr1-10.pdf>. This shall be a continuing condition that survives the expiration of this Order and shall be included in any Certificate of Compliance as a continuing condition in perpetuity.

Project Completion

- J.62 Upon completion of the project or 60 days prior to the expiration of this Order of Conditions, the Applicant or a representative thereof shall file for a Certificate of Compliance.
- J.63 The Applicant shall install permanent signage along the path in the restoration woodland planting area describing that the area is subject to an Order of Conditions under the Wetlands Protection Act, that the area was created as on-site mitigation to reduce impacts to Mill Brook, and that the area shall remain a woodland planting area in perpetuity. The sign shall be readily legible to visitors and not secured to a living tree.

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- J.64 When requesting a Certificate of Compliance for this Order of Conditions, the Applicant must submit a written statement from qualified professional(s) licensed and/or registered to work in Massachusetts. A professional engineer, registered land surveyor, and/or registered landscape architect shall certify that the completed work complies with the plans referenced in this Order and the professional(s) shall provide an as-built plan and statement describing any differences.
- J.65 All on-site mitigation as proposed as part of this project shall remain in perpetuity. The approved restored woodland and meadow planting areas, invasive removal areas, and the stormwater system shall remain in perpetuity and if replacement is necessary, shall be subject to the approval of the Commission. This shall be a continuing condition that survives the expiration of this Order of Conditions and shall be included in any Certificate of Compliance as a continuing condition.
- J.66 Based on the Applicant's agreement with the Conservation Commission to adhere to the conditions in the ZBA's Comprehensive Permit, the Applicant shall undertake monitoring as set forth in the Comprehensive Permit and provide the Conservation Commission with any monitoring reports.
- J.67 Perimeter fencing shall conform to the description on the approved plans (Document #1.1) and be constructed of wood with a 4" gap at the bottom for wildlife passage.
- J.68 Prior to commencement of construction, the Applicant must hire a qualified environmental monitor with qualifications reasonably acceptable to the ZBA and Conservation Commission. The environmental monitor shall conduct periodic inspections throughout the duration of the project. This period shall begin when siltation controls are installed and shall end with issuance of a Certificate of Compliance. The monitor shall submit an electronic report to the ZBA and Conservation Commission weekly regarding construction progress, relation to resource areas, and shall state whether such work is in their professional opinion in compliance with the comprehensive permit and Order of Conditions. During the duration of the project, the qualified environmental monitor shall also submit an electronic report after every rain event exceeding 0.5 inches of rain in a 24-hour period to the ZBA and Conservation Commission regarding the condition of the site during and after the rain event, as well as the status of erosion controls and any additional measures to address stormwater management issues caused by said rain event. The Conservation Commission reserves the right to change the frequency of inspections based on contractor performance, weather, or site conditions. All materials required to be submitted to the ZBA and Conservation Commission shall also be submitted to the Environmental Monitor.

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- J.69 Prior to mitigation planting, the Applicant must hire a qualified landscape architect with qualifications reasonably acceptable to the ZBA and Conservation Commission to be on-site during the installation of the restored woodland and meadow areas. Upon completion of the mitigation plantings, the landscape architect shall submit a report to the ZBA and Conservation Commission on the health of the plantings and whether such work is in their professional opinion in compliance with the comprehensive permit and Order of Conditions.
- J.70 The Applicant must hire a professional engineer to oversee the installation of the stormwater management system. A report describing installation of the stormwater management system must be submitted to the ZBA and Conservation Commission within 10 days of the completion of the stormwater management system. The stormwater report shall include as-built plans, photographs from installation, and a written summary of the installation of the stormwater management system and stormwater best management practices (e.g., porous pavement and other stormwater features, as applicable).
- J.71 The Applicant shall submit the contact information of the party responsible for monitoring and maintaining the mitigation and enhancement planting areas to the ZBA and Conservation Commission. Should any changes be made to this party, the ZBA and Conservation Commission shall be notified. This shall be a continuing condition in perpetuity that survives the expiration of this Order of Conditions and shall be included in any Certificate of Compliance as a continuing condition.
- J.72 All stormwater infrastructure, green infrastructure, and infiltration devices must be maintained per manufacturer specifications and an approved Operations and Maintenance plan, or Long-Term Pollution Protection Plan. The contact information for the person responsible for the implementation of the Long-Term Pollution Protection Plan shall be provided to the Conservation Agent. The plan shall include inspection by the applicant no less than once every six months, and cleaning and maintenance as needed based on inspection. The approved Operations and Maintenance Plan shall be included in the Order of Conditions recorded at the Registry of Deeds. Records of said inspection and cleaning shall be maintained on site and made available to the Conservation Commission upon request.

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K. Other General Conditions

- K.1 This Decision will be deemed to be final upon the expiration of the appeal period with no appeal having been filed or upon the final judicial decision following the filing of any appeal, whichever is later, as per 760 CMR 56.05(12)(a). In accordance with 760 CMR 56.05(12)(c), this Comprehensive Permit shall expire three (3) years from the date that the permit becomes final, unless (i) prior to that time construction authorized by the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law. The Applicant may timely apply to the Board for extensions to the Comprehensive Permit as permitted by law.
- K.2 The Applicant shall comply with all local regulations of the Town and its boards, commissions, and departments unless specifically waived herein or as otherwise addressed in these conditions.
- K.3 The Applicant shall copy the Board on all correspondence between the Applicant and any federal, state, or Town official, board, or commission concerning the conditions set forth in this Decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Project.
- K.4 This Decision prohibits the parking or storage of any unregistered vehicle on the site, and likewise prohibits the service of any vehicles on the site, except during construction. Overnight parking of vehicles on public ways is to comply with the Bylaws of the Town of Arlington. Parking of vehicles on private ways without the permission of the property owner is prohibited.
- K.5 In the event that the Condominium Association (or its Management Company) fails to maintain the stormwater management system for the Project in accordance with its operation and maintenance plan, within fourteen (14) days of notification by the Town to the Condominium Association/Management Company, the Town may conduct emergency maintenance and/or repair, as it deems necessary, and the Applicant shall, prior to the issuance of any certificates of occupancy, convey such easement or other rights in a form mutually acceptable to the Town and the Applicant as may be reasonably necessary to complete such repair and/or maintenance. In the event the Town opts to perform such maintenance in accordance with this paragraph, the Applicant or the successor Condominium Association shall reimburse the Town within forty-five (45) days for all of its reasonable expenses related to such work.

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- K.6 The Project entrance way and interior roads, and drainage systems associated therewith shall remain private, and the Town shall not have any legal responsibility for the operation and maintenance of such. The Town shall also have no obligations relating to the proposed recreational areas on the Property, the construction and operation of which shall be the sole responsibility of the Applicant.
- K.7 If any default, violation or breach of these conditions by the Applicant is not cured within thirty (30) days after notice thereof (or such longer period of time as is reasonably necessary to cure such a default so long as the Applicant is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) enforcement by the Zoning Enforcement Officer pursuant to G. L. c. 40A, § 7; (b) by mandamus or other suit, action or other proceeding at law or in equity, require the Applicant to perform its obligations under these conditions; or (c) take such other action at law or in equity as may appear necessary or desirable to enforce these conditions. If the Town brings any claim to enforce these conditions, and the Town finally prevails in such claim, the Applicant shall reimburse the Town for its reasonable attorneys' fees and expenses incurred in connection with such claim.

DECISION

In consideration of all of the foregoing, including the plans, documents and testimony given during the public hearing, the Board hereby grants the Applicant a comprehensive permit for the construction of fifty (50) home-ownership condominium units in a single structure, along with approximately 1,700 square feet of commercial space, pursuant to Chapter 40B, §§ 20-23, for the development described above.

RECORD OF VOTE

The Board of Appeals voted 5-0, at its public meeting on Tuesday, May 30, 2023, to grant a Comprehensive Permit subject to the above-stated Conditions, with this Decision as attested by the signatures below.

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Christian Klein, R.A., Chair



Patrick Hanlon, Vice Chair



Roger DuPont



Venket Holi, R.A.



Daniel Ricardelli, R.A.

Dated: May 30, 2023

Filed with the Town Clerk on June 2, 2023.

Town Clerk

Notice: Appeals, if any, by any party other than the Applicant, shall be made pursuant to Massachusetts General Laws, Chapter 40A, s. 17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, 730 Massachusetts Avenue, Arlington, Massachusetts, 02476. Any appeal by the Applicant shall be filed with the Housing Appeals Committee pursuant to G. L. c. 40B, § 23, within twenty (20) days after the filing of this notice in the Office of the Town Clerk.

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DECISION ON WAIVERS

The Board takes the following action on the waiver requests of local rules and regulations submitted by the Applicant as it has determined necessary for the construction of the Project as approved by the Board:

1. Zoning Bylaws Article 5, Section 5.5.3 – This section prohibits multi-family use in the underlying zoning district. The Applicant requests a waiver of this section to allow the Project to be constructed as proposed.

Board Action: Waiver Granted.

2. Zoning Bylaws Article 5, Section 5.5.2 – This section requires a minimum front yard setback of twenty feet (20'). The Applicant requests a waiver to allow a minimum front setback of seventeen feet (17').

Board Action: Waiver Granted.

3. Zoning Bylaws Article 5, Section 5.5.2 – The Applicant also requests a waiver of the maximum height requirement of this section, which limits the height of structures to three (3) stories and thirty-five feet (35'). The Applicant requests a waiver to allow a structure containing five (5) stories and a building height of sixty-six feet, four inches (66'-4").

Board Action: Waiver Granted.

4. Zoning Bylaws Article 5, Section 5.5.2 – The Applicant also requests a waiver of the Floor Area Ratio (FAR) requirement in this section, which limit FAR to a maximum of 0.75. The Applicant requests a waiver to allow a FAR of 2.0.

Board Action: Waiver Granted.

5. Zoning Bylaws Article 6, Section 6.1.4 – This Section requires 1 off-street parking space per residential unit plus additional off-street parking for the commercial space. The Applicant requests a waiver to allow a total of fifty-one (51) parking spaces for the proposed fifty (50) condominium units and the associated approximately 1,700 square feet of commercial space.

Board Action: Waiver Granted.

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6. Zoning Bylaws Article 6, Section 6.1.12 – This Section requires one and a half (1.5) long-term bicycle parking spaces and one-tenth (0.10) of a short-term bicycle parking space per dwelling unit. These Bylaws do not allow hanging bike spaces to count toward the minimum number of required bike spaces without a finding of the Special Permit Granting Authority unless physical assistance is provided. The Applicant requests a waiver to allow forty-eight (48) bicycle parking spaces in the basement and twenty-seven (27) unassisted hanging bicycle spaces in the garage.

Board Action: Waiver Denied as Unnecessary. Pursuant to G. L. c. 40B, §§ 20-23, a comprehensive permit subsumes all local permitting requirements. Accordingly, this comprehensive permit includes a finding of unusual circumstances unique to the property under the local bylaw, thus no waiver is required.

7. Town Bylaws, Title V, Article 16, Sections 2 and 4 (Tree Protection and Preservation) – The Applicant requests a waiver of the requirement to make a payment to the tree fund for removal of protected trees, in lieu of the Riverfront Restoration Area proposed in the Approved Plans.

Board Action: Waiver Granted, based on the Riverfront Restoration Area, the restored woodland, and the street trees to be provided at the front of the building as proposed in the Approved Plans together with the additional street trees required under Condition I.23.

8. Town Bylaws, Title V, Article 8 (Wetlands Protection) – The Applicant requests a waiver from the procedural requirement of obtaining an Order of Conditions from the Arlington Conservation Commission. No substantive waiver of the Wetlands Protection Bylaw was requested.

Board Action: Waiver Denied as Unnecessary. Pursuant to G. L. c. 40B, §§ 20-23, a comprehensive permit subsumes all local permitting requirements. Accordingly, this comprehensive permit includes an Order of Conditions under the local bylaw, thus no waiver is required.

9. Town Bylaws, Title V, Article 15 (Stormwater Management) – The Applicant requests a waiver of the procedural requirement of obtaining approval of a stormwater management plan. No substantive waivers of this article are requested.

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Board Action: Waiver Denied as Unnecessary. Pursuant to G. L. c. 40B, §§ 20-23, a comprehensive permit subsumes all local permitting requirements. Accordingly, this comprehensive permit includes approval of the stormwater management plans under the local bylaw, thus no waiver is required.

10. Arlington Historical Commission – The Applicant notes that the structure at 1021-1023 Massachusetts Avenue is listed on the Arlington Historic Structures Inventory, requiring a determination from the Arlington Historical Commission whether the structure is preferably retained under the demolition delay bylaw. The Applicant requests that the Board determine that the structure is not required to go through the demolition delay process.

Board Action: Waiver Denied as Unnecessary. Pursuant to G. L. c. 40B, §§ 20-23, a comprehensive permit subsumes all local permitting requirements. Accordingly, this comprehensive permit includes waiving the requirement for demolition delay under the local bylaw, thus no waiver is required.

11. Town Bylaw Title V, Article 14 (Outdoor Lighting) – This bylaw prohibits uplifting. The Applicant requests a waiver to allow some uplifting as shown on the Approved Plans.

Board Action: Waiver Denied as Unnecessary. The Applicant has removed all uplifting fixtures from the project.

12. Sewer Inflow and Infiltration Fees – The Applicant requests a waiver of any applicable sewer inflow and infiltration fees.

Board Action: Waiver Granted.

13. Zoning Bylaws, Article 5, Section 5.3.17 – The Applicant requires a waiver from the building step back requirements of this section, which requires an additional seven and one half (7.5) foot step back beginning at the fourth (4th) story along the street frontage.

Board Action: Waiver Granted.

14. Town Bylaws, Title V, Article 12, Section 3 – The Applicant requires a waiver from the noise abatement requirements of this section, which limits exterior work to the hours of 8:00 A.M. to 6:00 P.M. on weekdays and 9:00 A.M. to 5:00 P.M. on Saturdays, Sundays, and legal holidays.

Board Action: Waiver Granted. Refer to Condition E.13.